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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

RECALL DUNLEAVY, an)
unincorporated association,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA, DIVISION OF)
ELECTIONS, and GAIL FENUMIAI,)
DIRECTOR, STATE OF ALASKA)
DIVISION OF ELECTIONS,)
)
Defendants.)

Case No. 3AN-19-10903 CI

NOTICE RE: ORDER SETTING SCHEDULING CONFERENCE

The plaintiff, Recall Dunleavy, filed this complaint on November 5, 2019, challenging the Director of the Division of Elections' decision not to certify its recall application. Recall Dunleavy filed a motion for expedited consideration the same day. The Court set a scheduling conference for November 14, 2019, asking the parties to be prepared to discuss the proper interpretation and application of AS 15.45.720. As explained below, this statute sets a 30-day statute of limitations for an interested party to challenge a recall-certification decision of the director, not a 30-day deadline for a court decision.

Alaska Statute 15.45.720 provides: "Any person aggrieved by a determination made by the director under AS 15.45.470 - 15.45.710 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given." For years the State has interpreted this statute to

provide that an aggrieved person must file a superior court action within thirty days.

The Department of Law provided this interpretation in 2005,¹ 2011,² 2013,³ and 2019.⁴

No litigant or court has ever disputed this interpretation. This interpretation makes sense, because a court would be hard pressed to issue a decision on recall within thirty days if an aggrieved party waited two or three weeks after the “notice of determination” to file a superior court action. And this interpretation is consistent with the deadline for appealing nearly all other final agency decisions, which typically is thirty days.⁵

It is also consistent with the Alaska Supreme Court’s interpretation of identical language in AS 15.45.240, which provides the same 30 day deadline for initiative cases, and which was enacted at the same time as AS 15.45.720.⁶ In *Nw. Cruiseship Ass’n of*

¹ See Review of Application for Recall of Senator Ben Stevens, 2005 WL 2300397 (Alaska A.G. 2005) (informing Director Laura Glaiser, “If you decline to certify this application, you should advise the recall committee that it has the right to seek judicial review under AS 15.45.720 within 30 days of the date of the notice of your determination.”).

² See Review of Application for Recall of House Representative Kyle Johanson, 2011 WL 5848617 (Alaska A.G. 2011) (informing Director Gail Fenumiai of the same).

³ See Lindsey Holmes Recall Application, 2013 WL 5848617 (Alaska A.G. 2013) (same).

⁴ See Review of Application for Recall of Governor Michael J. Dunleavy, 2019 WL 5866609 (Alaska A.G. 2019).

⁵ See, e.g., AS 43.05.242(a) (providing 30 days to appeal to superior court decision fixing the amount of a tax or penalty); AS 46.15.165(l) (providing 30 days to appeal to superior court decision of commissioner on water rights); AS 18.60.370 (providing 30 days to appeal to superior court decision of commissioner of labor and workplace development about inspection certificate); AS 28.15.166(m) (providing 30 days to appeal to superior court decision on driver’s license revocation).

⁶ See §§ 9.24 and 9.96 ch 83 SLA 1960 and §§ 175 and 199 ch 100 SLA 1980. The court “generally construes statutes *in pari materia* where two statutes were enacted
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Alaska, Inc. v. State, the Court said: “Alaska Statute 15.45.240 establishes a thirty-day period within which a person who claims to have been harmed by a determination made by the lieutenant governor regarding the initiative process must bring a suit to challenge the determination.”⁷ Similarly, in *Boucher v. Engstrom*⁸ and *McAlpine v. Univ. of Alaska*, which overruled *Boucher*, the Alaska Supreme Court discussed AS 15.45.240, describing it as a “statute of limitation period.”⁹

DATED November 13, 2019.

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By:



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at the same time, or deal with the same subject matter.” *Underwater Const., Inc. v. Shirley*, 884 P.2d 150, 155 (Alaska 1994).

⁷ 145 P.3d 573, 581 (Alaska 2006) (emphasis added).

⁸ 528 P.2d 456 (Alaska 1974).

⁹ 762 P.2d 81, 85 (Alaska 1988).

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Defendants.

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CERTIFICATE OF SERVICE


I certify that on this date true and correct copies of the **Notice re: Order Setting Scheduling Conference** and this **Certificate of Service** were served via U.S. mail and email on the following:

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